

IN THE SUPREME COURT OF IOWA

NO. 17-1990

STATE OF IOWA,

Plaintiff/Appellee,

v.

LORI DEE MATHES,

Defendants/Appellants.

APPEAL FROM THE IOWA DISTRICT COURT
FOR MONONA COUNTY

HON. DUANE E. HOFFMEYER, Chief District Judge

FINAL BRIEF OF AMICUS CURIAE
IOWA COUNTY ATTORNEYS ASSOCIATION

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Identity of amicus curiae and interest in the case

The Iowa County Attorneys Association (ICAA) is a nonpartisan association of Iowa's county attorneys and their assistants. The county attorney is the chief law enforcement officer for his or her county. The primary purposes of the association are to encourage and maintain close coordination among county attorneys and to promote the uniform and efficient administration of the criminal and juvenile justice systems of Iowa.

Summary of the argument

This Court has requested the views of various amici of the legality of a common practice. In every courtroom in this state, criminal cases are routinely disposed of by a dismissal at the defendant's cost. Perhaps the defendant has pleaded guilty to unrelated charges. Sometimes the victim has had a change of heart. A smart defense attorney can often advance her client's interests with such a disposition. The imposition of costs in these circumstances (which always requires the defendant's consent) imposes a minor financial consequence but no criminal conviction.

Such dismissals are on firm legal footing. A court always has the authority to enter orders ancillary to the underlying dispute – even if it ultimately were to lack subject matter jurisdiction over the underlying controversy. This authority includes the imposition of court costs against a willing defendant.

I. A court always has the lawful authority to regulate litigation – even when it is later determined the court lacked subject matter jurisdiction or the action is otherwise terminated. Here, the district court – with the defendant’s consent – required her to pay court costs in a dismissed case. Was the district court’s cost order lawful?

Preservation of error.

The procedural irregularity of this appeal is adequately described by the briefs previously filed by the parties.

Standard of review.

As this case involves a question of law this Court reviews the decision of the district court for correction of error. Iowa R. App. P. 6.907. To the extent that the issue presented in this case involves constitutional considerations, the Court engages in de novo review. *Id.*

Argument

Dismissals of criminal cases with costs assessed against the defendant are common – so common that they are part of the essential “toolkit” of any criminal law practitioner. Defendants often – indeed, regularly – have multiple unrelated criminal cases pending at any one time. Every prosecutor and public defender in Iowa have negotiated a disposition where the defendant pleads guilty to the most serious case and the rest get dismissed at his cost.

Or consider cases where the victim has a change of heart. A prosecutor may be willing to take a dismissal with costs rather than fight with her own victim. A smart defense attorney will recognize that this is a fair disposition. The imposition of costs becomes a minor financial consequence to the defendant without worrying about the imposition of a conviction.

These dismissals require the defendant’s consent. They are not predicated on the court’s authority to impose costs as a part of a criminal judgment. In such a case the defendant’s consent is irrelevant.

This Court has invited ICAA to express its views on two related questions. The first asks whether the court has subject matter jurisdiction to assess court costs in a criminal case when the court dismisses all charges. The second asks that if it does, whether the court has authority to assess costs or, in the alternative, is the assessment of costs an illegal sentence under these circumstances.

a. Subject matter jurisdiction

The answer to the first question requires us to consider first principles. Subject-matter jurisdiction “concerns a court’s competence to adjudicate a particular category of cases.”

Wachovia Bank, N.A. v. Schmidt, 546 U.S. 303, 316 (2006).

Some law must create the court and give it the power to pass on the legal question raised by the particular action. *Pennoyer v. Neff*, 95 U.S. 714, 733 (1878). In the case of the Iowa courts, we find this in both our state constitution and statutes.

The sovereign power of the State of Iowa extends to all lands described in its constitution and as accepted by Act of Congress dated March 3, 1845. Iowa Code § 1.2. Of course, one aspect of sovereignty is the right to impose the judicial

power. *United States v. Wheeler*, 435 U.S. 313, 320-21 (1978).

The judicial power of the State of Iowa is “vested in a supreme court, district court, and such other courts, inferior to the supreme court, as the general assembly may, from time to time, establish.” Iowa Const. Art. V, § 1. The district court “has exclusive, general, and original jurisdiction of all actions, proceedings, and remedies, civil, criminal, probate, and juvenile, except in cases where exclusive or concurrent jurisdiction is conferred upon some other court, tribunal, or administrative body.” Iowa Code § 602.6101. The district court’s power includes “all the power usually possessed and exercised by trial courts of general jurisdiction, and is a court of record.” *Id.*

Lori Dee Mathes was prosecuted for the offense of possession of a controlled substance, third offense contrary to Iowa Code § 124.401(5). The trial information alleged that she committed this offense within Monona County, State of Iowa. The State of Iowa therefore asserted the power to prosecute her for this offense. Iowa Code § 803.1(1)(a) (subjecting persons to prosecution in Iowa who commit an offense within

the state) and Iowa Code § 801.4(13) (defining “prosecution” as “the commencement, including the filing of a complaint, and continuance of a criminal proceeding, and pursuit of that proceeding to final judgment on behalf of the state or other political subdivision.”)

There can be no possible claim that the district court lacked subject matter jurisdiction over this criminal case. This is, frankly, an easy question. The more interesting question (although the answer to it is clear enough) is whether the district court, while admittedly having subject-matter jurisdiction, had the authority to order her to pay court costs when the case was dismissed.

b. Authority to issue ancillary orders after dismissal – general principles

The Court’s order inviting amici to participate rightly notes that subject-matter jurisdiction is distinct from the question of whether it lacks authority to hear a particular case. *In re Estate of Falck*, 672 N.W.2d 785, 789 (Iowa 2003). In such a case, “an impediment to a court’s authority can be obviated by

consent, waiver, or estoppel." *Id.* (citing *State v. Mandicino*, 509 N.W.2d 481, 483 (Iowa 1993)).

And a dismissal – even for lack of subject-matter jurisdiction – does not deprive a court of authority to enter ancillary orders connected with orderly administration of judicial business. *Cooter & Gell v. Hartmax Corp.*, 496 U.S.384, 395 (1990). "Like the imposition of costs, attorney's fees, and contempt sanctions, the imposition of a Rule 11 sanction is not a judgment on the merits of an action...[s]uch a determination may be made after the principal suit has been terminated." *Id.*

Analogously, although the district court is divested of jurisdiction for a particular case during an appeal there is an exception for "issues collateral to and not affecting the subject matter of the appeal." *In re Estate of Tollefsrud*, 275 N.W.2d 412, 418 (Iowa 1979). Thus, a district court may modify a restitution order even though it has no jurisdiction. *State v. Jose*, 636 N.W.2d 38, 46 (Iowa 2001). Or change an appeal bond while the appeal is pending. *State v. Formaro*, 638 N.W.2d 720, 726-27 (Iowa 2002).

There is nothing novel about the imposition of a financial obligation on a criminal defendant – even when the defendant has secured a dismissal or an outright acquittal at trial. Acquitted defendants may be required to repay indigent defense costs. Iowa Code § 815.9(6). To be sure, the acquitted defendant is entitled to a hearing at which the court must make findings about her reasonable ability to pay. *Id.* This hearing and finding is required due to the constitutional considerations of imposing the financial obligation and the underlying constitutional right to counsel. *State v. Dudley*, 766 N.W.2d 606 (Iowa 2009). And, as the obligation is merely a civil judgment, the court may not use its contempt power to secure payment. *State v. Sluyter*, 763 N.W.2d 575, 582 (Iowa 2009).

But the fundamental point remains: the court imposes a financial obligation on a defendant after it has been conclusively and finally determined that the defendant is not guilty of the underlying offense. That determination (while certainly important to the defendant) does not stop the court

from entering orders necessary for the efficient administration of justice ancillary to the conclusion of the case.

c. Authority to impose financial obligations on a defendant notwithstanding the dismissal of the criminal case

Court costs are inherently creatures of statute. The code directs the clerk to collect a variety of costs for the filing and docketing of criminal process. Iowa Code § 602.8106. For example, the clerk must collect \$60 “[f]or filing and docketing of a complaint or information for a simple misdemeanor...” Iowa Code § 602.8106(1)(b). As a matter of practical convenience, the clerk does not require the officer to stand at the counter and write a check – the clerk runs a balance showing the total costs in and out of the system at any one time for cities and counties. See, Iowa Code § 802.8109. Finally, court costs for enforcement of state law payable by counties are waived. Iowa Code § 602.8106(1)(a). These court costs are imposed at the beginning of the case – not at judgment.

There is, of course, an express statutory mechanism to require defendants to pay court costs in connection with the

judgment and sentence of the court. Iowa Code § 910.1(4). In the case of a dismissal, however, the authority to do so is based on the clerk's general duty to tax costs "which the court may have awarded as costs in the progress of the action, or may allow." Iowa Code § 625.14.

Costs may even be assessed against the successful party when they cannot be collected against the other party. Iowa Code § 625.5. *Grant v. Laurie*, 533 N.W.2d 563 (Iowa 1995) (successful plaintiff in a wrongful death action required to pay statutory guardian ad litem fees for the incarcerated defendant). Statutes should be read together and harmonized, if possible, to give effect to all of them. *State v. Lutgen*, 606 N.W.2d 312, 314 (Iowa 2000). The authority of § 625.5, when read in harmony with the waiver of costs payable by the county on behalf of the state in § 602.8106(1)(a), supports the proposition that the court may order costs to be paid by the defendant – especially with her consent.

This Court has recently held that the parties in a criminal case are free to enter into agreements requiring the defendant to pay costs on dismissed counts. *State v. McMurry*, 925

N.W.2d 592, 601 (Iowa 2019). The logic of this decision fully supports the district court's order here. Mathes consented to the exact outcome that she received.

This Court's order to amici cites *Woodbury County v. Anderson*, 164 N.W.2d 129, 133 (Iowa 1969) for the proposition that "[c]osts in criminal prosecutions are unknown at common law; their recovery in any criminal case depends wholly upon statutory provisions therefor. In the absence of such statutory authorization, a court has no power to award costs against a defendant on conviction." *Woodbury County* is distinguishable from the present case.

In *Woodbury County* the Court considered whether a county could recover, as part of court costs, the indigent defense costs it had borne for a man who was ultimately acquitted of his criminal charge. This Court rejected the county's effort. "We find no authority for holding that the county has any common law right of recovery against those who receive benefits provided by [the code section providing for indigent defense at county expense]." *Id.* at 134. This holding is, of course,

abrogated by the statutory provisions authorizing the recovery of indigent defense costs discussed above.

Woodbury County is an example of occasional efforts – earnest but unsuccessful – of litigants to use the general power of the court to tax court costs to recover the winning party's attorney's fees. "At common law court costs were not allowed under that name. They are now taxable only to the extent provided by statute." *Ottumwa v. Taylor*, 251 Iowa 618 (1960).

Woodbury County stands for the proposition that a particular *type* of court cost must be authorized by statute. ICAA fully agrees with this. But no one questions that indigent defense costs, the filing and docketing fee, and the court reporter fee are authorized by statute. The issue is who is responsible to pay them. *Woodbury County's* language about statutory authorization is not relevant to the question before the Court.

d. The specific financial obligation imposed in this case

The appendix to this appeal does not reveal the exact court costs owed by Mathes. We do know that the district court judge expressly found that she had the ability to pay and consented to being taxed these costs. (App. 66). A query¹ of the Iowa Court Information System by ICAA reveals that her financial obligations are largely fees for court-appointed counsel:

<u>Detail</u>	<u>Payer/Payee</u>	<u>Obligor/Obligee</u>	<u>Original Amount</u>	<u>Paid Amount</u>	<u>Date</u>	<u>Receipt</u>	<u>Type</u>
FILING AND DOCKETING FEES CRIMINAL	LORI MATHES / STATE OF IOWA	LORI MATHES / STATE OF IOWA	100.00	0.00			
INDIGENT DEFENSE-MISDM-REIMBURSE STATE	LORI MATHES / STATE OF IOWA	LORI MATHES / STATE OF IOWA	1815.28	0.00			
COURT REPORTER SERVICES	LORI MATHES / STATE OF IOWA	LORI MATHES / STATE OF IOWA	40.00	0.00			
COPY FEES	LORI MATHES / STATE OF IOWA	LORI MATHES / STATE OF IOWA	68.00	68.00	08/16/2017	674496	CHK
COPY FEES	LORI MATHES / STATE OF IOWA	LORI MATHES / STATE OF IOWA	12.50	12.50	08/17/2017	674510	CHK
COPY FEES	LORI MATHES / STATE OF IOWA	LORI MATHES / STATE OF IOWA	1.00	1.00	10/24/2017	675751	CSH
INDIGENT DEFENSE-MISDM-REIMBURSE STATE	LORI MATHES / STATE OF IOWA	LORI MATHES / STATE OF IOWA	1032.00	0.00			
INDIGENT DEFENSE-MISC-REIMBURSE STATE	LORI MATHES / STATE OF IOWA	LORI MATHES / STATE OF IOWA	2.20	0.00			

Mathes owes a total of \$2,849.48 for the services of her two court-appointed attorneys. As we have seen, there is express

¹ ICAA respectfully requests that the Court take judicial notice of the case information shown in its own records. The screenshot included here was created December 13, 2019.

statutory authority to impose this expense on her. She also owes \$100 for court costs and \$40 for court reporter services. See, Iowa Code § 625.8(2) (taxing \$40 per day for the services of a court reporter).

All of these court costs are authorized by statute. Mathes received the exact benefit of the bargain she struck with the State of Iowa. The court had express statutory authority to tax costs contemporaneously with the dismissal of the case.

Conclusion

An agreed-to dismissal at the defendant's cost is a staple of the practice of criminal law in this state. These dismissals are consistent with the district court's authority to enter orders ancillary to the resolution of the underlying legal dispute.

Respectfully submitted,

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Certificate of Compliance

This brief complies with the type-volume limitation of Iowa R. App. Pro. 6.903(1)(g)(1) because it contains 2273 words, excluding parts of the brief exempted by that rule.

This brief complies with the typeface requires of Iowa R. App. Pro. 6.903(1)(e) and the type style requirements of Iowa R. App. Pro. 6.903(1)(f) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Bookman Old School, 14 point type.

No party, their counsel, or other individual has authored this brief in whole or in part. No party, their counsel, or other individual has contributed funds to the preparation of this brief.

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